THE COURT OF UTTARANCHAL AT NAINITAL
First Appeal No. 732 of 2001
(Old F.A. No. 62 1987)

State of U.P. through Divisional Officer, Forest Department Pithoragarh. (Defendant)

… Appellant.

Vs.

Narayan Lal Shah aged about 54 years, son for late Sri Nath Lal Shah, Contractor Champawat, District Pithoragarh.
(Plaintiff)

… Respondent.

Sri Nand Prasad, learned Standing Counsel for the appellant-State.
Sri B.S. Adhikari, Advocate, learned counsel for the respondent.

Date June 19, 2006
P.C.: Hon'ble B.S. Verma, J.

This appeal is directed against the judgment and decree dated 27-10-1986 passed by the then District Judge Pithoragarh in Original Suit No. 13 of 1985, Narayan Lal Shah Vs. State of U.P. through D.F.O. Pithoragarh, whereby the learned District Judge decreed the suit of the plaintiff in part for recovery of Rs. 34,200/- along with interest @ 16% per annum from the date of filing of suit till payment.

Relevant facts, necessary for a just decision of the appeal are that the plaintiff-respondent filed the suit against the appellant for recovery of Rs. 50,000/- along with interest pendentelite and further @ 16% per annum with the allegation that in the auction sale of lot no. 195/81/82 of Pali Van Panchayat conducted by D.F.O. Pithoragarh on 23.3.1982 wherein the plaintiff also participated in the bids and ultimately, plaintiff's highest bid of Rs. 30,000/- was provisionally accepted on the same dated and an agreement was entered between the parties. The plaintiff was required to deposit the entire auction money, and sales tax in four equal installments of Rs. 77.50 on 1.6.1982, 1-7-1982, 1-9-1982 and 1-10-1982 and the work of extraction of trees was to be completed by 31-10-1982. Accordingly papers were sent to conservator of Forest Kumaon Circle Nainital for approval of the auction sale.

The approval was received by the plaintiff in the month of June 1982 i.e. after expiry of the agreed period of fifty days. The plaintiff pleaded that being fire season, no work could be carried out till 30th June and thereafter rainy season starts and the plaintiff contractor could start work in November, therefore, it was not possible for the plaintiff to get the work completed within the stipulated period. The plaintiff requested the D.F.O. concerned for extension of time, who assured the plaintiff provided the contractor deposited the entire amounts including the sales tax. Believing on that assurance, the plaintiff deposited the entire amount of Rs. 34,000/- in the first week of December. Again, recommendation was made for approval of the Conservator and the plaintiff expressed his willingness to pay late-fee etc. The contractor also informed the forest Department that the agreement for execution of work stood void as the approval was not communicated within a period of 50 days. Therefore, the plaintiff requested the Department either to refund the entire amount deposited by him or to grant extension. Subsequently, the department conditionally extended the period stating that the work shall be executed through Van Nigam, which was beyond the scope of agreement and the plaintiff declined to accept. When no heed was paid by the department, the plaintiff came up with the present suit.

The defendant-appellant resisted the suit and filed its written statement, denied the allegations made in the plaint and asserted that the auction sale was approved within the fixed period of 60 days and the same was communicated to the contractor through D.F.O. concerned. According to defendant, the plaintiff was bound to complete the work by 31.10.1982, which he failed to do. It was also asserted that the trees were felled down and destroyed, therefore, re-auction was not possible and the plaintiff was not entitled for his own wrong.

The learned Judge framed following issues in the case :-

1. Whether plaintiff was legally bound to execute the work under the terms of contract, if so, its effect?

2. Whether the work could not be execute due to the fault of the plaintiff, if so, its effect?

3. Whether the plaintiff is entitled to the refund of auction money and sales tax amounting to Rs. 34,200/- together with interest @ 16% per annum and other damages?

4. Whether the plaintiff was under the obligation to execute work through Ban Nigam as pleaded in para 24 o written statement, if so, its effect?

5. Whether the plaintiff had applied fro extension of the period of work within the stipulated period of contract, if so, its effect?

6. Whether the non execution of the work by the plaintiff amounts to abandonment, if so its effect?

7. To what relief, if any, is the plaintiff entitled?

Thereafter, the learned District Judge recorded the evidence led by the rival parties, heard them and after perusing the evidence record came to the conclusion that the agreement between the parties was not legal and the same was violative of mandatory provisions of Article 299 of the Constitution and accordingly, the agreement between the parties was held null and void as the deed of agreement was not made either by the President or by the Governor of the State. The learned District Judge after having considered the entire aspect of the case held that the plaintiff-contractor was not bound to execute the work under agreement. Ultimately after dealing with all the seven issues from page 6 to 18 of the impugned judgment, the suit for recovery of Rs. 34,200/- was decreed along with interest @ 16% per annum as mentioned earlier.

In the appeal, the impugned judgment and decree have been assailed on the ground that he learned District Judge lost sight of the obligation on the plaintiff to complete the work by the stipulated period and the finding of the trial court on the point of deposit of earnest money in the first week of December 1982 is absolutely incorrect. Therefore, the trial judge committed illegality in deciding the suit in favour of the respondent.

I have heard learned counsel for the parties and perused the entire evidence on record including the lower court record. After having considered the contentions of the learned counsel for the State-appellant, I do not find force in the present appeal for the following reasons.

Firstly, in the case at hand, the learned District Judge framed separate issues on the disputed questions between the parties and has discussed each and every issue distinctly and independently. The grounds raised in the present appeal that it was for the plaintiff-respondent to have completed the work within the stipulated period as per agreement deed falls to the ground for the simple reason because it is established on record that the bid of the plaintiff was accepted and communicated to the contractor by the Officer concerned beyond the period of fifty days from the date of execution of agreement deed. There is no explanation on record to show as to what was there to prevent the defendant-State to accept the bid within the period of 50 days and the reasons therefore are well known to the State or its authorities alone. I need not comment on this score, as there are other substantial grounds fatal to the case of the defendant-appellant.

Secondly, the agreement between the parties is on record as Ext. A-2. It is well settled that the provisions of Article 299 of the constitution of India are mandatory in character and therefore, when there is State as a party to the agreement, the same ought to have been executed by the Authority concerned on behalf of the Governor of the State. In the instant case, as rightly held by the learned District Judge, that the agreement deed is not enforceable in the eye of law and on this ground alone, the agreement between the parties is liable to be ignored. The matter on this point has already been dealt with in detail and I do not think to reiterate the same thing, which was expressed by the learned District Judge in the impugned decree and judgment, therefore, it is

not open to the defendant-State to say that the plaintiff was required to complete the contractual work within the stipulated time.

Thirdly, on Issue No. 3, the learned District Judge has observed that "Admittedly the plaintiff purchased the lot in the open auction sale of Rs. 30,000/-. This amount and the Sales tax accruing therein was to be paid by him in four equal instalment of Rs. 7750/- with the department till December, 1982. The office endorsement at the foot of the application Ex. A.5 discloses that the plaintiff deposited Rs. 7500/- with the department immediately after the fall of summer in the month of August 1982 and Rs. 7500/- in the month of December 1982." It is not disputed that the contractor deposited total amount of Rs. 34,200/- with the defendant department. Even the witnesses proved that the plaintiff deposited the said amount with the defendant department, to which the plaintiff was entitled to recover form the State along with interest.

Fourthly, the plaintiff has led evidence on record that he employed labourers and *Chirans* and paid them Rs. 1200/- in advance, but the learned District Judge declined to accept this claim of Rs. 1200/-. It was fully proved on record that the amount of Rs. 34200/- remained in deposit with the defendant, therefore, the plaintiff has been rightly held entitled to get interest @ 16% per annum. The dispute between the parties relates back to the year 1982, therefore, this rate of interest does not warrant any interference. In the result, the appeal fails.

The appeal is hereby dismissed. The judgment and decree, under appeal, are upheld. No order as to costs.

(B.S. Verma, J.)

RCP